

WV Developmental Disabilities Council  
Comments on Chapter 512  
Covered Services, Limitations, and Exclusions for Traumatic Brain Injury (TBI)  
Waiver Services  
(January 30, 2012)

The WV Developmental Disabilities Council offers the following comments on the proposed Chapter 512:

**General Comments**

The DD Council commented during the application process, and remains concerned, that this program will serve only a very limited number of WV citizens who have experienced a TBI. As written, only those recently injured are likely to benefit, since they are the individuals most likely to be in an institutional setting.

The DD Council knows there are currently individuals in the State with a TBI who need and could benefit from services, but will not have access to this program. **There will also continue to be individuals below the age of 22 who will acquire a TBI who will not be eligible for this Waiver, and who will not qualify for the I/DD Waiver. How will they access needed services?**

For those citizens who will be able to apply and qualify for services, the array and quantity is very limited, i.e., the cap of less than one hour per week of Cognitive Rehabilitation Therapy and the limit of 30 hours per month on Community Activities.

Because the cap on Personal Attendant Services is listed as being determined by what the individual budget allows there is no way to know if this service will be sufficient to meet the need.

Much of the language for Chapter 512 appears to have been taken directly from Chapter 501, which covers the Aged and Disabled (A/D) Waiver Program. Some of this language is confusing and/or contradictory. For example, in Sec.512.3.8, dealing with Criminal Background Checks and Restrictions, this statement appears: "An individual who is providing services or is employed by a provider agency cannot be considered to provide services nor can be employed..."

Another example occurs in Sec.512.4, covering Incident Management Overview. Critical incidents are defined as incidents with a high likelihood of producing real or potential harm to the Member's health and welfare. However, several of the examples listed include this language: "...that does not compromise the health or safety of the Member."

In this same section, after several readings the intent of the first example remains unclear. It appears that suspected and/or observed criminal activity by a variety of individuals and/or entities represent a critical incident for a Member. As

written, if a “concerned citizen,” a “public agency,” or others listed are suspected of or observed to commit a criminal activity, it becomes a reportable critical incident for the Member. The intent could be made clearer by re-writing the statement to say “Criminal activity which may affect the Member that is suspected or observed by (any of those listed) would be reported as a critical incident.”

Finally, the reporting time frame for incidents varies among the three Waiver programs. This could be problematic, and at the least confusing, for agencies who could be providing services in each of the programs.

### **Specific Comments**

#### **512.1 Definitions: APS Healthcare Administrative Services Organization (ASO)**

The Council questions the appropriateness of having one agency to be responsible for day-to-day operations, oversight, medical evaluations, and medical eligibility determination. This is not the case in any other Waiver program operated by the state.

#### **512.3.7 Cognitive Rehabilitation Therapist (CRT) Qualifications**

**Is there a time frame for when Licensed Behavioral Health Center (LBHC) staff and independent professionals providing CRT must attain certification?**

#### **512.3.8 Criminal Investigation Background Checks and Restrictions and Medicaid Exclusion List**

Both the A/D Waiver and the I/DD Waiver require providers to check the OIG Exclusion List monthly. This proposed Manual only suggests that “it may be beneficial” to do so. The Manual should be explicit in providing guidance on this matter.

#### **512.4 Incident Management Overview**

The first bullet in this section is not an incident classification, and should precede the statement: “Incidents shall be classified by the provider as one of the following.”

#### **512.5.1.2 Initial Medical Evaluation**

The last paragraph in this section indicates that an applicant’s PAS and Ranchos Los Amigos Scale will be sent to a selected Case Management Agency and Personal Attendant Service Agency when a slot is available, but prior to financial eligibility being determined. **Why would this type of medical**

**information be shared so broadly prior to determining the applicant eligible to receive services?**

#### **512.5.2 Financial Eligibility**

For clarification of the complete eligibility process, this section should precede 512.5.1.3 Medical Reevaluation as it does in Chapter 513 (the I/DD Waiver Manual). Medical and financial eligibility for the program are both pre-requisites for the program, and occur prior to an annual re-evaluation.

#### **512.11.1 Case Management Code, Unit, Limit, and Documentation Requirements**

In a program with very limited services, it is unclear why the cap on Case Management services, which only benefits an individual indirectly, is the same as the cap on Cognitive Rehabilitation Therapy, which provides a direct benefit to the individual.

#### **512.12.1.1 Personal Attendant Service (Direct Care Staff) – Staff Qualifications and Training**

This section refers to “qualifications such as licenses, transcripts, certificates,” but does not indicate what these are. **What will be the qualifications for the direct care staff and where are they listed?**

#### **512.12.1.2 Personal Attendant Service (Direct Care Staff) Responsibilities**

A service cap is listed as a staff responsibility in D, where community activities are limited to 30 hours per month.

The goals and objectives (512.2.TBI Waiver Program Description) are focused on “providing services that are person-centered, that promote choice, independence, participant-direction, respect, and dignity and community integration.” A cap of less than one hour per day (30 hr/month) of community activities does not appear to meet the stated goals and objective of the program.

**In reference to the functions/tasks that cannot be performed by Personal Attendants (A-L); What other State services will members be able to access for the provision of these services if they are needed? Does the Personal Care Option in the State Plan allow for the provision of these services?**

#### **512.14 Cognitive Rehabilitation Therapy**

A Waiver program for individuals with a TBI is needed, in large part, because CRT is not an available service in either the A/D or I/DD Waiver. The

absence of this service is one of the reasons neither of the other Waiver programs appropriately meet the needs of such individuals. The cap of 48 hours annually is less than one hour per week. **How likely is this to meet the need, particularly for a recently injured person?**